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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

STATUTORY REVIEW OF THE SYSTEM FOR REGULATING RATES AND CLASSES FOR MARKET-DOMINANT PRODUCTS	DOCKET NO. RM2017-3

COMMENTS OF MAILERS HUB LLC
(February 3, 2020)

Pursuant to Order No. 5337, Mailers Hub LLC submits the following comments on the above-cited docket.

I. INTRODUCTION

Mailers Hub LLC (MH) is a private subscription service that, like a trade association, provides postal- and mailing-related information, resources, and support to printers, mailing service providers, and related businesses. Mailers Hub LLC also partners with other industry groups to provide information and representation on postal and regulatory affairs.

II. BACKGROUND

Among other things, the Postal Accountability and Enhancement Act (PAEA), enacted in December 2006, prescribed the system for regulating rates and classifications for market-dominant Postal Service products, and assigned administration of that system to the Postal Regulatory Commission ("PRC" or "the commission"), just as its predecessor organization, the Postal Rate Commission, had administered the analogous elements of the 1970 Postal Reorganization Act ("PRA"). The PAEA also stipulated that, ten years after its enactment, the PRC would conduct a review of the PAEA's ratesetting mechanism "to determine if the system is achieving the objectives" set forth in the statute (39 USC 3622(d)(3)). Should the commission find that the system is not achieving those objectives, the PAEA enables the PRC to

> "make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives."

Accordingly, on December 20, 2016, the commission issued Order No. 3673, establishing Docket No. RM2017-3, and initiating a two-step process: first, to conduct the required review and, second, to propose modifications to the ratesetting system as necessary based on the result of that review.

The commission completed the first step of its process on December 1, 2017, issuing Order No. 4257 to present is findings and conclusions. After summarizing the relevant requirements of the PAEA and the nine objectives that Congress intended the ratesetting process to achieve, the PRC stated that

> "After extensive review, the Commission concludes that the system achieved some of the goals of these areas, but the overall system has not achieved the objectives taking into account the factors of the PAEA."

In turn, the commission issued Order No. 4258 to begin the second step of its process, giving notice of a proposed rule to adopt "such modifications to existing regulations or adopt such an alternative system through new regulations that the Commission deems necessary to achieve the objectives of 39 USC 3622(b)."

III. THE FIRST PROPOSED RULE

The first proposed rule would have amended nine subparts of 39 CFR 3010 that contain "the rules governing the Regulation of Rates for Market Dominant Products" implemented by the PRC. Some of the proposed revisions were editorial or organizational, others proposed for clarity or "to improve transparency," and some related to procedural components of the ratesetting process. Generally, the proposed revisions to the ratesetting process would have afforded the Postal Service rate authority in excess of that allowed under the CPI-based cap (39 USC 3622(d)(1)(A)) and adjusted workshare discounts:

- "… 2 percentage points of rate authority per class of mail per calendar year for each of the first 5 full calendar years following the effective date of these rules. …"
- "… up to 1 percentage point of rate authority per class of mail per calendar year based upon the Postal Service meeting or exceeding an operational efficiency-based standard and adhering to service quality-related criteria. …"
- "… For non-compensatory products, the Postal Service shall increase the rate of the product by a minimum of 2 percentage points above the percentage increase of the class that includes the non-compensatory product. …"
- " … 2 percentage points of additional rate authority for non-compensatory classes. …"
- "… The percentages of avoided costs that may be passed through to a customer in the form of a workshare discount are limited, and must fall within defined bands. …"

Comments, and reply comments, submitted on the first proposed rule opposed the commission's approach to amending the ratesetting process, particularly because the additional rate authority that would have been afforded the Postal Service would have enabled price increases that, in the view of most commenters, would be a disincentive to using the mail. If mail volume and postage revenue decreased in turn, making the Postal Service less financially stable, the amendments to the ratesetting process advanced by the proposed rule would have had the opposite result from that which they were intended to yield.

IV. THE SECOND PROPOSED RULE

No further action was taken on the first proposed rule but, after considerable deliberation, the commission issued a second proposed rule ("Revised NPR") on December 5, 2019 (Order No. 5337), published in the December 11, 2019, *Federal Register* (84 FR 67685-67702).

The Revised NPR would amend 39 CFR 3010 Subparts A-J to again provide additional price authority to the Postal Service, though under a different structure that was proposed in the first proposed rule. As described by the commission:

- Subpart A: "describes the applicability of the rules, provides an index, sets forth relevant definitions, and modifies the schedule for regular and predictable rate adjustments."
- Subpart B: "modifies procedures applicable to periodic rate adjustments (including extending notice and filing periods from 45 to 90 days), setting forth specific requirements for contents of a rate adjustment filing

(including mandating that the Postal Service certify that it has used the most recently accepted analytical principles in its rate adjustment filing), specifying content to be included in supporting technical documentation, and describing the sequence of a proceeding applicable to a request to review a notice of rate adjustment. This section also specifies the calculation of the maximum rate adjustment authority and imposes limitations on certain rate decreases, providing an exception for certain *de minimis* rate increases."

- Subpart C: "relates to the timing of rate adjustment authority dependent on CPI-U."
- Subpart D: " creates additional rate authority to address the effects of decreases in mail density and sets forth the data sources and calculation of the density rate authority."
- Subpart E: "creates additional rate authority to provide the Postal Service with revenue for remittance towards the statutorily mandated Retirement Health Benefits Fund, Civil Service Retirement System, and Federal Employees Retirement System unfunded liabilities. This section provides definitions, procedures applicable to claiming the additional rate authority, and the data sources, calculation, and requirement that the Postal Service remit the amount of revenue collected under this authority towards the supplemental and unfunded liabilities."
- Subpart F: "creates an additional 1 percentage point of rate authority per class of mail based upon the Postal Service meeting or exceeding an operational efficiency based requirement and adhering to a service standard-based requirement. This section sets forth the timing for the Postal Service to claim the additional rate authority and describes the criteria for claiming both the operational efficiency-based requirement and the service standard-based requirement."
- Subpart G: "describes new rate-setting criteria applicable to non-compensatory classes and products."
- Subpart H: "relates to the manner by which the Postal Service is required to calculate unused rate adjustment authority and, if applicable, revise the schedule of banked rate adjustment authority whenever it plans to adjust rates."
- Subpart I: "incorporates the requirements concerning exigent rate increases. These updates are not intended to change the meaning or operation of the current rules, but the current rules have been reorganized."
- Subpart J: "establishes rate design criteria for workshare discounts, including setting forth new limited instances in which the Postal Service may set workshare discounts below avoided costs."

IV. GENERAL COMMENTS

Before offering specific comments on the subparts noted above, we repeat an observations offered in our joint comments on the first proposed rule (*Comments Of Mailers Hub LLC and the National Association Of Advertising Distributors, Inc.*, (March 1, 2018)), particularly that it is essential for the commission, and commenters in general, to consider the larger picture within which evaluation of the PAEA ratesetting process should be set.

A. <u>The context of the PAEA.</u>

The ratemaking process established by the 1970 Postal Reorganization Act (Pub.L. 91-375) essentially considered two elements: the costs to run the postal system and the ratepayer revenues necessary to pay them. Though ratepayers were rightly concerned that, despite PRC regulation, the ratesetting mechanism allowed the agency to pass through costs in its rates without any incentive to become more efficient or to significantly restrain those costs, mail volume seemed to grow anyway. In Fiscal 2006, for example, – which ended less than three months before the PAEA was enacted – mail volume was nearly 213 billion pieces, more than it would ever be again in a single year. Though there was awareness of the impact on mail volume caused by the adoption of electronic means for messaging, information, and business, the rapidity and magnitude of that impact was not well understood and, of course, the recession that would hit in 2008 was not anticipated.

The PAEA's ratemaking mechanism clearly echoed the concerns of the mailing industry by restraining the Postal Service's authority to raise its rates, linking that authority to the cost of living (the Consumer Price Index, "CPI") and, indirectly, forcing the agency to pursue operational efficiencies.

Unfortunately, the PAEA was developed in the years following passage of legislation (Pub.L. 108-18, April 2003) that corrected the Postal Service's liability to the Civil Service Retirement System – a correction that altered the anticipated inflow of revenue to the US Treasury. As a result, legislators more concerned over the federal budget than the appropriate obligations to be borne by the USPS (or the consequences to the agency's finances of imposing such obligations), advanced other legislation that imposed new financial burdens on the USPS, thus ensuring that the inflow to the US Treasury continued, albeit for another reason. Relevant to the instant discussion was the mandate to prefund future postal retiree health care costs (Pub.L 109-435 § 803, codified as 5 USC 8909a).

It's instructive that the prefunding provision as drafted in mid-2004 contemplated a 40-year amortization – a timeframe that was preserved in several subsequent iterations – but that an amendment to the postal reform bill shortly before it was passed changed that, instead requiring the Postal Service to prefund $55.8 billion over a ten-year period (the usual budget horizon). Again, in the view of many observers, insertion of this relatively short timeline was motivated solely by the need to get a better "score" for the bill and to win support for the bill from budget hawks. (The eventual beneficiaries of the services being prefunded, if even hired yet by the USPS, were years away from using them, so the need to quickly fully fund those services is questionable.)

It's widely understood that the Postal Service agreed to the prefunding requirement in order to win passage of the PAEA which, presumably, they felt offered more than offsetting improvements in other ways. Whether there was wider consideration of the feasibility of the prefunding mandate in the context of possible future economic circumstances – e.g., if mail volume shouldn't continue to grow – isn't known but, if such concerns were present they failed to make a difference in the final legislation. The *Congressional Record* for December 8, 2006, the day before passage of the PAEA, contains remarks about the bill with little mention of the prefunding provision and no reflection on whether the ratesetting process in the bill was adequate to enable funding of the annual payments on the accelerated timeline.

As a result, the PAEA implemented a ratesetting process, and assigned it objectives, that may have seemed reasonable when they were drafted, but there's no apparent evidence that they were re-evaluated to verify their adequacy to underwrite the belatedly amended, and significantly more aggressive, prefunding mandate. As we now know, that disconnect proved to undermine the success of the new ratesetting mechanism from the outset.

Therefore, we believe that evaluating the PAEA's ratesetting process and, in light of the PRC's findings, what should be done to modify it, should to be within the context outlined above, and how the expectations of the PAEA need to be viewed under current circumstances.

B. <u>The PAEA's expectations in light of later developments.</u>

Because we now know more about how events over the decade from 2006 to 2016 impacted the Postal Service than was possible before that period, it seems illogical to evaluate what should be done to modify the PAEA's ratesetting process without a reasonable interpretation of that process's objectives in light of subsequent and current circumstances.

We believe that, first and foremost, perhaps the most important objective of the ratesetting process, "to ensure adequate revenues, including retained earnings, to maintain financial stability" should be set against what that process was intended to do – finance regular operations of the Postal Service and enable it to pay other mandated expenses *on the timeline that was concurrently envisioned.* We would argue that, while the revenue generation limitation represented by the CPI cap may have been sufficient to support USPS expenses when PAEA's foundations were laid, the cap's ability to enable revenue was not rethought when the prefunding timeline was belatedly shortened from forty years to ten. In turn, it's arguable that little if any attention was given to whether the CPI-capped process could generate the necessary additional revenue or, more importantly, whether postal customers would cooperate in producing it. Experience and history have shown that the result of the accelerated timeline, concurrent with the recession, has been ballooning Postal Service debt. Experience also has shown that ratepayers now are even less inclined to accept higher prices than they were in 2006 and, moreover, have adequate communications options to implement any non-mail preferences. These realities cannot be ignored.

Second, given the financial burdens on the USPS related to prefunding and other mandates and the lower level of revenue now being generated by mail usage, the statute's objective of maintaining "high quality service standards" needs to be balanced realistically against the associated costs and the availability of revenue needed to meet that objective. Moreover, both how postal services are used today compared to how they were used in 2006, and the public's perception of and need for "service" have changed. It would seem illogical to impose rates to cover costs for levels of service that the same ratepayers often no longer need or expect – or are not willing to underwrite. This is not to say that service standards should be further relaxed, that universal service should be compromised, or that current USPS service performance should not improve. Rather, while consistent and reliable service should be expected of the USPS, that needs to be balanced against the costs for such service, especially in light of shrinking mail volume, declining postage revenue, and an expanding delivery network (i.e., less mail, representing less revenue, destined for more delivery points).

Third, it would seem reasonable to assume that the broad purpose of the PAEA was to ensure the long-term viability of the Postal Service. Accordingly, it would be irrational to adopt ratesetting rules that, if implemented, would be contrary to that purpose. Such rules would be the result, we argue, if the PAEA's ratesetting process were modified without regard to how the postal environment has changed since 2006, particularly if changes were made without acknowledging their impact on mail volume. As persons aware of the Postal Service's business twenty years ago can attest, mail no longer "happens," ratepayers no longer complain about rate increases but send more mail anyway, and businesses and citizens have robust, ubiquitous, and inexpensive options to communicate that were far less an alternative to hard-copy mail then than they are now. These factors, we would assert, argue for moderation in measures to "fix" the ratesetting process: all that *could* be done perhaps *shouldn't* be done lest the treatment for the illness kill the patient it's supposed to save.

Accordingly, we wish to emphasize that, in commenting on the instant rulemaking – particularly how to amend the ratesetting process to enable financial stability for the USPS – we cannot endorse rate increases that ignore marketplace reality. While the narrow assignment of the PAEA regarding the review of the ratesetting process, and the limited options for amendment that it offers, might appear to limit the commission only to enabling additional revenue to move the Postal Service closer to financial stability, that objective cannot be implemented without causing the opposite effect – driving away more mail volume, which would *decrease* postal revenue, and exacerbate the Postal Service's adverse financial circumstances.

V. SPECIFIC COMMENTS

A. Subpart B – Rate Adjustments.

Broadly speaking, USPS rates for market-dominant products should equal, as closely as possible, the total attributable and institutional costs related to providing the associated services, plus a degree of "retained earnings" as allowed by the PAEA. If those associated costs are scrupulously managed, revenue increases aligned to an appropriate and valid external standard should, barring "extraordinary or exceptional circumstances," enable the USPS to pay its controllable expenses and any other *reasonable* financial obligations imposed on it.

Generally, postal costs are internal (and presumed to be within its control) or external (not within its control). If the combined costs for the Postal Service's internal and external obligations are balanced by its income, the agency would be financially stable. However, the Postal Service's income is not based simply on its *authority* to raise revenue, but on the *availability* of revenue from customers willing to use its services.

Accordingly, the financial balance is disrupted or inhibited if either the Postal Service's costs escalate excessively (because of failures in internal controls or uncontrollable increases in the cost to meet external obligations) or revenues fail to meet the necessary level. Arguably, the Postal Service's current financial condition is because *both* its internal costs (e.g., for labor) and external costs (e.g., to make the PAEA's prefunding payments) are beyond its income and because the agency's revenue is inadequate – or, more accurately, the *availability* of revenue (from ratepayers) is inadequate, regardless of its *authority* to establish the prices for those ratepayers.

Therefore, setting costs aside for the moment, allowing the Postal Service more rate *authority* does not translate into more net income. Tellingly, or perhaps as their times would have suggested, those who framed the PAEA ratesetting provisions seemed to have subscribed to the notion that the *availability* of revenue was so vast that it simply needed to be tapped more aggressively to cover more costs – like the prefunding payments.

Regardless of how valid that notion might have been fourteen or thirty years ago, it isn't now. Notwithstanding the studied opinions of economists and statisticians, it's empirically obvious that, in today's world of mail and communications, there is a point for every existing mail user (ratepayer) when another increase in price will result in that mail user mailing less or simply not mailing at all. Therefore, providing the Postal Service with more rate *authority* – for <u>any</u> reason – neither compels ratepayers to pay the resulting rates nor ensures that the *availability* of revenue will grow as expected. Unlike in the 1980s, mail no longer "happens."

In turn, we would submit that evaluating what percentage of increased rate *authority* should be granted the Postal Service is itself wrongly premised. Every scenario assumes that the *availability* of revenue – postage from ratepayers willing to supply it – will grow as assumed. Raising rates by 1% or 2% over CPI would generate more revenue *if* the same ratepayers enter the same mail, but that's a flawed assumption. Some of the pre-increase mailing volume will not be repeated at a higher price; volume will decrease, even if the exact amount and pace of volume decline due to over-CPI rate increases could be debated.

Some commenters will support or oppose over-CPI rate authority for their own reasons, but unless the *availability* of revenue can be increased, the debate is academic. The revenue well is drying up, and drawing more from it for any reason will not make it refill.

B. <u>Subpart C – Consumer Price Index Rate Authority.</u>

As was noted above, the PAEA reflects the concerns of ratepayers that, absent any control over its ability to raise rates, the Postal Service would have no incentive to be efficient, instead simply passing its costs along to customers in the form of higher prices. While the Postal Service may realize that marketplace reality inherently limits its ability to increase prices – with or without the presence of a cap – its struggles to control costs are a powerful motivator for it to want more revenue, which would be possible if the current CPI-based limit were relaxed.

We agree with the industry consensus on having an externally-derived cap on postage rates and, as discussed above, we do not believe that piercing that limit for any reason is either a guarantee of additional revenue (*authority* vs *availability*) or an appropriate remedy for the causes of the need for that increased revenue. Resolving conditions that drive excessive cost should be addressed directly, not papered-over by supplying additional revenue.

That being said, we remain of the belief that the Consumer Price Index is the wrong yardstick to use as the basis for a cap on postage rates. Our major concern is that the CPI measures the cost experiences of *consumers*, not businesses, and certainly not of the Postal Service. As defined by the Bureau of Labor Statistics, the CPI is "a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services"; over 42% of the CPI is based on housing, and over 80% is based on housing, food, medical care, and transportation. By comparison, the Postal Service's costs are mostly for employee and retiree compensation and benefits (including workers' compensation and employee health and retirement funds). The USPS does not buy food, and its utility costs are well above those of a household. Therefore, using the cost experience of *consumers* seems inappropriate as a proxy for the Postal Service's cost experience.

Other cost indices exist; the Employment Cost Index and others produced by the Bureau of Labor Statistics study and report on the cost experiences of businesses. While it is not within our expertise to judge or recommend which would serve as a better basis for calculating a postage price cap, we still urge that the commission consider replacing the CPI with another index for use in determining the Postal Service's rate authority. Having a cap on rates is good; having one that's relevant to the regulated agency is better.

C. Subparts D – Density Rate Authority, E – Retirement Obligation Rate Authority, and F – Performance-Based Rate Authority.

Our position on additional rate authority over the CPI-based cap is as stated in subsection A, above. Inventing various premises for granting the Postal Service additional rate *authority* does not assure the *availability* of revenue from customer postage payments. More importantly, it does nothing to address the reasons why additional revenue is needed.

The obligation imposed by Congress to prefund retiree costs is simply infeasible. Postal revenues in 2006 *may* have been sufficient to support annual payments averaging over $5.5 billion, but they clearly aren't now, and likely never will be able to again – at least, not in the foreseeable future. Simply developing more premises to gather more revenue offers no guarantee that more revenue will be forthcoming. To the contrary, the mere consideration of establishing new reasons for revenue generation – such as over-CPI rate authority – is sufficient to change the behavior (communication choices) of the businesses now using the mail. As noted above, if the current ratesetting mechanism can't yield whatever amount of revenue is required for any set of reasons, it's illogical to view (or be allowed to view) only the mechanism as the cause of the shortfall while ignoring (or not being allowed to examine) the sources of the disproportionate revenue demand.

Similarly, service performance should not be an excuse for affording additional rate authority to the Postal Service. Striving for consistent attainment of reasonable service standards should be foundational to the Postal Service's mission – and its executives contend that it is. Therefore, there should be no additional postage burden placed on ratepayers just to incentivize the Postal Service to do what it should do regardless. Moreover, the PRC examines USPS service performance regularly, and has the tools to demand that the agency meet established service standards; looking to ratepayers to provide the Postal Service with a performance-based rate incentive implies that the regulatory tools of the PRC are insufficient to yield that result on their own. If the commission finds that service performance is lagging because the Postal Service's financial position inhibits it from doing what's necessary to achieve expected performance, the commission has the latitude to authorize reductions in services to align reasonable operating costs to *available* revenue. If the commission otherwise finds that externally-imposed service requirements are resulting in costs beyond ratepayers' ability or willingness to underwrite, resolution of that misalignment should not be confined to reviewing and amending the ratesetting process.

D. Subpart G – Non-Compensatory Classes or Products.

Most non-compensatory classes and products did not become "underwater" in a year or two or even ten; Periodicals, as a class, for example, hasn't covered its costs since the PAEA was passed.

Therefore, to Periodicals ratepayers, or ratepayers of another non-compensatory class or product, the rates they've been paying have essentially become the norm, and those rates are a cost element they consider in running the businesses that produce the associated mail. Why these classes and products are "underwater" can be debated; that they are, cannot, nor can it be debated that correction of their non-compensatory status should have been undertaken long ago. Aside from the resistance of ratepayers in those classes or for those products to accelerated rate increases to bring them to full cost coverage, the PAEA itself thwarted such efforts; the CPI cap is a two-edged sword that keeps rate increases to no more than CPI but also prevents larger rate increases to correct "underwater" classes and products.

Allowing the Postal Service additional rate authority beyond what the CPI-based cap or other provisions may allow would improve cost coverage, but so would lowering the attributable costs. How the USPS processes flat-size mail (the processing category that includes almost all Periodicals mail as well as flats in other classes) has been a matter of controversy between mailers and the USPS for years, as well as the subject of PRC scrutiny. Given this history, it's unlikely that a scholarly examination of flat mail processing would reveal an undiscovered path to significant cost savings, and it's equally unlikely that further changes in mailing standards, or even something as drastic as abandoning the Flats Sequencing System in favor of previous mechanized or automated equipment, would bring about the necessary cost reductions. The gulf between current rates and current costs is simply too great.

That cost coverage for non-compensatory classes and products needs to be brought to 100% is not debatable, but neither is the need for caution in how that's to be done. Periodicals rely on discretionary spending by subscribers; raising subscription prices risks losing them (absolutely, or to electronic alternatives) and that, in turn, depresses advertising revenues. But raising rates above the CPI level too slowly would unreasonably protract raising cost coverages to 100%. Though the price sensitivity of most non-compensatory mail will be challenged by an additional 2% per year rate increase above the CPI cap, requiring that seems the least than can be done.

However, any additional rate authority should be confined to the class or product currently "underwater," and should be separate from, not offset by, decreases in the rate authority available to other products in the class.

E. Subpart J – Workshare Discounts.

Worksharing (presort) is required for all commercial First-Class Mail and for all forms of Periodicals and Marketing Mail; automation compatibility (barcoding) is nearly ubiquitous; and destination entry is widely practiced by high-volume mail producers. Workshare mail is the norm, and the Postal Service's infrastructure and complement have been aligned to the near universal adoption of (or requirement for) some form of worksharing.

Ideally, allowing passthroughs in rates/discounts that equal 100% of the value of worksharing is a reasonable goal. However, ratepayers and commercial mailers will appreciate that ideal only to the extent it will benefit them; passing through 100% where only 85% may be passed through now would be welcomed, but passing through "only" 100% where 115% is passed through today would be met with strong opposition.

On balance, while moving toward the 100% ideal should be pursued, doing so should be done only when "desirable mailer behavior" can be maintained, not simply to reach a target. In addition, if the ideal is worth pursuing on its merits, then the breadth of reasons for why a passthrough should be more or less than the target range should be limited accordingly. Allowing an exception for material with an ECSI value, for example, reflects the general range of price concessions for such items, but begs the question of how costs (and workshare value) are different for two identical pieces simply because one has ECSI "value." Continuing such deference is a revenue choice that, in today's postal finances – if not in fairness to other ratepayers not producing such material – is of increasingly questionable appropriateness.

Looking at it with complete objectivity, worksharing in any form, compensated at any level of passthrough, should be perpetuated only if it works – "works" being defined as enabling the production, processing, and delivery of mail at the *lowest combined cost*, which includes mailer cost, postage, and USPS cost. Worksharing should not be priced, or encouraged or discouraged by rule or rate, to perpetuate a status quo; if the value and affordability of hard-copy mail – and the companies and Postal Service built upon it – are to remain viable, protectionism cannot be expressed in worksharing discounts or rates. Postal labor wants to reduce or eliminate worksharing to preserve its members' jobs, while some mail producers want to preserve artificially high workshare discounts for their own purposes; neither is a strategy that enhances the economic viability of the Postal Service or the establishment of equitable rates, especially when the *total combined cost* to the ratepayer is greater than it should be as a result.

VI. COMMISSION ACTION

We suspect that in the years since the PAEA was enacted that the commission has had ample opportunity to observe and evaluate the law's operation and draw its own conclusions. We also suspect that the commission is fully cognizant of the external factors influencing the Postal Service, the nature of the ratepayer community it serves, and the limitations of the marketplace affecting both. And we suspect that the commission realizes that the world of communication has changed greatly since 2006 – even more since 1970 – and that neither mail volume nor ratepayers' receptiveness to price increases are anything near what they once were.

However, the PAEA tasked the PRC with a very narrow directive: determine whether the PAEA's ratesetting process is enabling the achievement of nine statutory objectives and, if it isn't, change the process. For the first part, the PAEA doesn't seem to contemplate anything other than a binary answer – yes or no – with no room for conditions or exceptions. For the second part, the PAEA offers only one course of remedial action if the answer to part one was "no." Confining the review so narrowly, and limiting the resulting actions by the commission, may have seemed like a simple and straightforward mandate to the PRC when it was codified in 2006, but it disables thoughtful, proportional, and appropriate action today.

The commission is not empowered to ignore the PAEA's mandate to review and evaluate the ratesetting process, nor is it empowered to forego the development of remedial prescriptions for whatever shortcomings it may find. However, it *not* obligated to behave mechanically, to ignore marketplace reality, or take actions that it fully realizes would be harmful and counterproductive not only to the overarching intent of the PAEA but to the Postal Service and its customers as well.

In effect, the commission has done its job: it found the ratesetting process failing, and it proposed remedies within the scope of its assignment. We would submit that its next actions are not as restricted.

Specifically, having stated its findings, and determined the actions that would be needed to address them, it can exercise its regulatory discretion and elect to defer implementation of those actions. With complete legitimacy, the PRC could state both what it recommended (within its scope of authority) as amendments to the ratesetting process, and why it concluded that implementing those recommendations would not be prudent.

Beyond that, the PAEA does not bar the PRC from speaking to matters beyond its assignment to evaluate the ratesetting process. It is not prohibited from looking at the context of the PAEA and the larger environment in which it and the Postal Service exists, or from offering its expert perspective on significant relevant factors having a direct bearing on postal finances, postal costs, and postal customers, even if that perspective, or related recommendations, are beyond its official purview. Arguably, doing less would be falling short of its own mission ("foster a vital and efficient universal postal system"), its own vision ("to promote a robust universal mail system through objective, accurate, and timely regulatory analyses and decisions"), and its strategic goal to "Actively engage with Congress and stakeholders in support of a dynamic postal system."

While the PAEA might be interpreted to keep the commission "in its lane," this is a situation where it should say more than only what's required.

VII. CONCLUSION

We appreciate the opportunity to offer our comments on the PRC's proposed rulemaking. We realize that many sets of comments will be submitted, and that the divergence of the represented perspectives will be significant. Reconciling them to formulate a final course of action will be a truly Solomonic task, one we do not envy.

Regardless of how this rulemaking is concluded, we commend the commission for the complex and difficult work it's had to perform since December 20, 2016. The intertangled issues so easily described as the postal ratesetting process, and the underlying political, economic, and legislative subplots, belie the challenge of crafting *any* solution to the deficiencies the commission identified.

As we have observed, the larger problems impacting the Postal Service are beyond the ratesetting process, and require the attention of more than just the PRC.

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